

REMARKS

Reconsideration and allowance in view of the foregoing amendment and the following remarks are respectfully requested.

Rejection of Claims 1, 4-5, 9-10, 24, 27-28 and 30-31 Under 35 U.S.C. §103(a)

The Office Action rejects claims 1, 4-5, 9-10, 24, 27-28 and 30-31 under 35 U.S.C. §103(a) as being unpatentable over Epstein et al. (U.S. Patent No. 6,327,343) ("Epstein et al.") in view of Kanevsky et al. (U.S. Patent No. 6,219,407) ("Kanevsky et al."). Applicants respectfully traverse this rejection and respectfully submit that one of skill in the art would not have sufficient motivation or suggestion or an apparent reason to combine these references and furthermore even if combined they fail to teach each limitation of the claims.

In the previous Office Action, the Applicants added a step wherein determining the identity of each of one or more callers in each of one or more voice mail messages is done by two steps. The steps include (1) by comparing speech signals from one or more voice mail messages with one or more caller speaker models and (2) based on an analysis of the content of each one of the one or more voice mail messages. The Office Action asserts that on page 3 that Epstein et al. teach this step in column 7, lines 22-26 and lines 32-35. Applicants traverse this inasmuch as the reference does not teach determining the identity of the messages by performing both steps of comparing speech signals from each of the one or more voice mail messages with one or more caller speaker models and based on analysis of the content of each of the one or more voice mail messages. Applicants note that column 7 teaches, in lines 22-26, that a first step of determining if the speaker is identified by matching the received voice data with the previous voice models of such speaker. Line 27 states "if, on the other hand, the speaker...cannot be identified via the previously stored voice models, speaker identification may be performed by both the speaker recognizer module 22 and the ASR/NLU module 26, whereby the content of the

telephone message may be processed by the ASR/NLU module 26 to extract the caller's name which is then compared with previously stored names to determine the identity of such caller (step 140)." Applicants respectfully submit that this indicates a process of either identifying an identity of the caller via wherein the speaker recognition module 22 processes verbal statements and responses and compares them with previously stored speaker models or, if that identification of a caller cannot occur in that manner, the system uses the speaker recognizer module and an ASR/NLU module to extract a caller's name which is then compared with previously stored names to determine the identity of the caller. Accordingly, Applicants submit that because the reference teaches one or the other method, Applicants submit that it fails to teach determining the identity by performing both steps based on both concepts. Accordingly, Applicants submit that even if combined these references fail to teach each limitation of the claims.

Next, Applicants respectfully submit that Epstein et al. should not be combined with Kanevsky et al. and a deeper review of these references reveal that they actually teach away from their combination and thus by a preponderance of the evidence, Applicants submit that one of ordinary skill in the art would not have sufficient motivation or suggestion to combine these references.

To establish a *prima facie* case of obviousness, the Examiner must meet three criteria. First, there must be some motivation or suggestion, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to combine the references. Second, there must be a reasonable expectation of success, and finally, the prior art references must teach or suggest all the claim limitations. The Examiner bears the initial burden of providing some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must

present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." MPEP 2142.

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). MPEP 2143.01.

Furthermore, if the examiner determines there is factual support for rejecting the claimed invention under 35 U.S.C. 103, the examiner must then consider any evidence supporting the patentability of the claimed invention, such as any evidence in the specification or any other evidence submitted by the applicant. The ultimate determination of patentability is based on the entire record, by a preponderance of evidence, with due consideration to the persuasiveness of any arguments and any secondary evidence. *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The legal standard of "a preponderance of evidence" requires the evidence to be more convincing than the evidence which is offered in opposition to it. With regard to rejections under 35 U.S.C. 103, the examiner must provide evidence which as a whole shows that the legal determination sought to be proved (i.e., the reference teachings establish a *prima facie* case of obviousness) is more probable than not. MPEP 2142.

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art, and all teachings in the prior art must be considered to the extent that they are in analogous arts. Where the teachings of two or more prior art references conflict, the examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art, considering the degree to which one reference might accurately discredit another. *In re Young*, 927 F.2d 588, 18 USPQ2d 1089 (Fed. Cir. 1991). MPEP 2143.01.

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

With these principles in mind, Applicants respectfully submit that Epstein et al. and Kanevsky et al. teach away from their combination. The Office Action on page 4 asserts that the feature of receiving an identity of the caller from a voice mail subscriber in creating a storage folder for voice mail messages from the caller corresponding through received identity is taught by Kanevsky et al. at column 5, lines 38-42 and column 9, lines 29-35 and that one of ordinary skill in the art would have found it obvious to modify Epstein et al.'s voice mail messages for callers and the enrollment of new callers as taught by Kanevsky et al. because "the system would enroll any new message from a new caller for subsequent processing, i.e. storing messages from a caller in a particular folder..." Applicants note that Kanevsky et al. teach a telephone voice mail messaging system for performing recognition of characters included in a telephone message that is left by a caller. Column 5, cited by the Examiner, teaches that a voice mail user may have information about a new speaker such as a name, telephone number, address, voice mails, etc. added to the system so that the speaker may be recognized in future calls. They highlight that this relates to the enrollment of a new caller.

Column 9 teaches that their system preferably permits a voice mail user to update and add entries associated with new callers to the phone book store and callers database in a process of enrolling new callers. The information on the new callers such as the name, telephone and so forth may be based on speech recognition if no other sources of information exist. Applicants note that Kanevsky et al. is used for the teaching of interaction from the voice mail subscriber in providing the identity of a caller if the identity of the caller of a voice mail message cannot be determined. Applicants respectfully submit that Epstein et al. specifically teach away from this

approach which establishes Applicants position that one of skill in the art would not have sufficient motivation or suggestion to combine these references. Notably, Epstein et al. teach that their invention is a system and method for providing automatic call and data transfer processing according to a program procedure based on the identity of a caller or author and the subject matter and content of the message. Column 1, lines 7-11. In introducing their invention, Epstein et al. state that convention states that conventional systems that are not capable of automatically performing distinct processing procedures. Epstein et al. set up the problems in the prior art in which a user must first answer his or her telephone calls manually or retrieve such calls from the answering machine or voice mail and then decide how to proceed on a call by call basis. Their invention eliminates or mitigates such burdensome manual processing. Accordingly, it is clear that a manual process such as receiving an identity of the caller from a voice mail subscriber is discouraged in the introduction of Epstein et al. See column 1, lines 20-31.

They then set forth as an object of their invention to provide a system and method for automatic call and data transfer processing in accordance with a predetermined manner based on the identity of the caller or author, the subject matter and the call or message and/or time of day. Column 1, lines 44-49. Another object of their invention is to provide a system that is responsive wherein the system can identify and verify the user before allowing the user to access calls or messages or program the system. Column 1, lines 64-67. Throughout this reference they teach that an aspect of their invention is querying the caller to insure that the identity of the caller is identified. Preferably, they include a speech recognition module that determines the identity of the caller and participants to conference calls, for example, from the voice data received by a server. Column 5, lines 10-13. They further teach that simultaneous with the recording and storing of the audio data, the identity of the caller is determined by processing the

callers audio communications or responses to queries to the system. When a caller provides verbal statements, the system processes those statements to identify the identity of the caller. As is noted above, if the speaker or first time caller cannot be identified by the previous stored voice models, they include a process of using a speaker recognizer module and an ASR/NLU module to extract the caller's name which can then be compared to previously stored names to determine the identity of the caller. Then, in column 7 starting at line 39, they state that in the event that the system is unable to identify the caller from either storing voice mail or the contents of the telephone message, the speaker recognizer module sends the signal to a server which prompts the caller to identify him or herself with a query.

In this case, the system asks the caller to identify themselves and even asks for details regarding the reason for the call. Again, the purpose of this identification is to avoid "burdensome manual processing." Column 1, line 31. Column 7, line 50 continues to teach that once the caller or author has been identified by the system, a signal is sent to process the call or message based on the identity of the caller. Line 55 states "if, on the other hand, the identity of the caller ultimately cannot be identified, the system 10 may be programmed to process the call based on the unknown caller (step 154) by, e.g. forwarding the call to a voice mail." In this regard, the teaching here is entirely consistent with the purpose and goals of Epstein et al. to avoid the burdensome manual processing. Note that Epstein et al. consider at this point that the identity of the caller "ultimately" cannot be identified. Thus, in so doing, Epstein et al. would clearly discourage one of skill in the art from utilizing the teachings of Kanevsky et al. which require the same kind of "burdensome manual processing" that is taught throughout Epstein et al. as undesirable. In numerous other places, Epstein et al. teach prompting the caller in order to obtain the identity information. See column 8, lines 26-31; column 10, lines 1-9 and lines 61-66; and column 15, lines 44-60.

Applicants note that column 15 highlights Applicants position by summarizing the invention of Epstein et al. Here again, they state that their invention involves processing incoming telephone calls in “a predetermined manner without the user having to first manually answer a telephone call or retrieve an email or facsimile message, identify the caller or the author of the message, and then decide how to transfer such call or respond to such message.” This, in the concluding portion of the disclosure of Epstein et al., summarizes Epstein’s position and solidifies Applicants argument that certainly the express teachings of Epstein et al. away from requiring the “voice mail subscriber” to provide the “identity of the caller” is almost word for word discouraged in Epstein et al. For this reason, Applicants submit that we have easily established by a preponderance of the evidence that Kanevsky et al. clearly teach away from blending it’s teachings with Epstein et al. Accordingly, Applicants respectfully submit that claims 1, 4, 5, 9, 10, 24, 27, 28, 30 and 31 are patentable and in condition for allowance.

Rejection of Claims 10 and 31 Under 35 U.S.C. §103(a)


The Office Action rejects claims 10 and 31 under 35 U.S.C. §103(a) as being unpatentable over Epstein et al. in view of Kanevsky et al. and further in view of Murveit et al. (U.S. Patent No. 6,766,295) (“Murveit et al.”). Applicants submit that based on the arguments set forth above that claims 10 and 31 are patentable as well.

CONCLUSION

Having addressed all rejections and objections, Applicants respectfully submit that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited. If necessary, the Commissioner for Patents is authorized to charge or credit the **Novak, Druce & Quigg, LLP, Account No. 14-1437** for any deficiency or overpayment.

Respectfully submitted,

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By: _____

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